IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.2715 of 2006

Mukesh Sambhaji Nikam & anr. Petitioners

Vs.

Smt. Sitara Ibrahim Shaikh & anr. Respondents

Mr.V.V.Purwant for petitioners.
Mr.A.N.Mulla for resp.no.1.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 18, 2007.

P.C.

. Heard Mr.Purwant, the learned counsel for the petitioners who are impleaded as accused in RCC No.708 of 2002 filed before the learned Chief Judicial Magistrate at Solapur for the offences punishable under Section 420 read with Section 34 of IPC. The accused are the husband and wife. In the said complaint the petitioners had applied for discharge and the said application at Exhibit 23 came to be dismissed by the learned Chief Judicial Magistrate on 3/11/2004. This order was carried in Criminal Revision Application No.2 of 2005 which also came to be dismissed by the learned 4th Ad-hoc Addl. Sessions Judge at Solapur vide his judgment and order

dated 19/7/2006. Hence this petition.

. The FIR filed by the complainant - present respondent no.1 clearly indicates that the petitioner no.1 had received an amount of Rs.6,50,000/- from the complainant towards the sale transaction of the bungalow which the petitioner no.1 had claimed that he had purchased it and in fact the petitioner no.1 had released an advertisement for the sale of the said bungalow located in Ashirwad Nagar, opposite Shede colony. It was subsequently realised that the bungalow was not transferred in the name of the petitioner no.1 and he had no title to transfer the same. The complainant, therefore, demanded the return of Rs.6,50,000/- and initially the accused no.1 issued a cheque for Rs.7,50,000/- signed by his wife and in favour of the complainant. The cheque was dishonoured. Thereafter some agricultural land was sought to be hypothecated or transferred by way of an agreement for sale but these documents also were not registered. The police undertook the investigation and on completion of the same charge-sheet has been filed for the offence punishable under Section 420 read with Section 34 of IPC against both the accused.

. The learned counsel for the petitioners, as before the Sessions Court, submitted that Special Civil Suit No.324 of 2002 has already been filed by the complainant and it is for the specific performance of the agreement. He further submitted that in any case petitioner no.2 has been unnecessarily dragged into the criminal proceedings and she had no role to play in the alleged transaction between the petitioner no.1 and the complainant. These arguments carry no force. A prima facie case for trial has been made out as is clear from the charge-sheet submitted by the police after investigation against both the accused. Accused no.2 had signed the cheque drawn in favour of the complainant for an amount of Rs.7,50,000/- from her account knowing fully well that there was no such balance. Both the Courts below have considered all the arguments advanced for discharge and noted that the trial is required to go ahead. No interference is called for in the said concurrent views and in any case the view taken by the Courts below cannot be termed as perverse or grossly erroneous.

. Hence the petition is rejected summarily.

Ad-interim order stands vacated. Trial is expedited and it is directed that it shall be concluded preferably by 31st December 2007.

. Writ to go to the trial Court forthwith.

(B.H.MARL